



**GENERAL SERVICES ADMINISTRATION**

**41 CFR Part 102-82**

**[FMR Case 2016-102-3; Docket 2016-0019; Sequence No. 1]**

**RIN 3090-AJ76**

**Federal Management Regulation (FMR) ; Utility Services**

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** GSA is proposing to amend the Federal Management Regulation part regarding utility services. The rule clarifies the authority an agency must have in order to procure utility services and describes in detail agencies' responsibilities concerning the procurement of such services. To better direct agencies that operate under a utility service delegation from GSA, the rule adds a reference to the section of the Federal Acquisition Regulation that addresses the acquisition of utility services and other procurement guidance. Additionally, the rule clarifies responsibilities for the Department of Defense and the Department of Energy for compliance.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before **[INSERT DATE 60 DAYS**

**AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**] to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FMR Case 2016-102-3 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal Rulemaking Portal by entering "FMR Case 2016-102-3." under the heading "Enter Keyword or ID" and select "Search". Select the link "Submit a Comment" that corresponds with "FMR Case 2016-102-3" and follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FMR Case 2016-102-3" on your attached document.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Lois Mandell, 1800 F Street, NW, Washington, DC 20405.

Instructions: Please submit comments only and cite FMR Case 2016-102-3, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov> approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Chris Coneeney, Director, Real Property, Office of Government-wide Policy, at 202-208-2956, or email at [chris.coneeney@gsa.gov](mailto:chris.coneeney@gsa.gov). For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division (MVCB), 1800 F Street, NW, Washington, DC 20405, 202-501-4755. Please cite FMR Case 2016-102-3.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This part was last revised and published in the Federal Register on November 8, 2005 (70 FR 67785). The currently proposed rule includes the following changes:

- Updating the regulation to both clarify the authority an agency must have and point the reader to the appropriate parts of the Federal Acquisition Regulation that relate to the acquisition of utility services;
- Clarifying agency, the Department of Defense, and the Department of Energy responsibilities regarding utility services.

**B. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available

regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is a significant regulatory action and was subject to review under Section 6(b) of EO 12866. GSA has determined that this proposed rule is not a major rule under 5 U.S.C. 804.

**C. Executive Order 13771**

This proposed rule is not expected to be subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this proposed rule is expected to be related to agency organization, management, or personnel.

**D. Regulatory Flexibility Act**

This proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This proposed rule is also exempt from the Regulatory Flexibility Act pursuant to 5 U.S.C. 553(a)(2) because it applies to agency management.

**E. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

**F. Small Business Regulatory Enforcement Fairness Act**

This proposed rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

**List of Subjects in 41 CFR part 102-82-Utilities**

Federal buildings and facilities, Government property management, Rates and fares, Utilities.

**Dated:**

Jessica Salmoiraghi,  
Associate Administrator,  
Office of Government-wide Policy.

For the reasons set forth in the preamble, GSA is proposing to revise 41 CFR part 102-82 to read as follows:

**PART 102-82—UTILITY SERVICES**

**Subpart A—General Provisions**

Sec.

- 102-82.5 What does this part cover?
- 102-82.10 What are the governing authorities for this part?
- 102-82.15 Who must comply with these provisions?
- 102-82.20 To whom do "we," "you," and their variants refer?
- 102-82.25 How do we request a deviation from the provisions of this part?

**Subpart B—Utility Services**

- 102-82.30 What authority must my agency have in order to procure utility service(s)?
- 102-82.35 Can Executive agencies enter into contracts for utility services?
- 102-82.40 What are Executive agencies' rate intervention responsibilities?

**Authority:** 40 U.S.C. 121(c) and 40 U.S.C. 501.

**Subpart A—General Provisions**

**§102-82.5 What does this part cover?**

This part covers the procurement and management of public utility services. It does not cover utilities that are provided as part of a lease. For more information on the procurement of utility services, refer to Federal Acquisition Regulation (FAR) Part 41, Acquisition of

Utility Services. For more information on the management of Utility Services, refer to 40 U.S.C. 501.

**§102-82.10 What are the governing authorities for this part?**

The authorities for this regulation are:

- (a) 40 U.S.C. 121(c);
- (b) 40 U.S.C. 501.

**§102-82.15 Who must comply with these provisions?**

All Executive agencies procuring, managing or supplying utility services under Title 40 of the United States Code, including GSA's Public Buildings Service (PBS), Department of Defense, Department of Energy, and those agencies operating under, or subject to, the authorities of the Administrator of General Services must comply with these provisions. For information on a utility services delegation of authority, refer to part 102-72.100 of this chapter.

**§102-82.20 To whom do "we," "you," and their variants refer?**

Unless otherwise indicated, use of pronouns "we," "you," and their variants throughout this part refer to an Executive agency. Refer to part 102-71, General, of this chapter, for the definition of Executive agency.

**§102-82.25 How do we request a deviation from the provisions of this part?**

Refer to sections 102-2.60 through 102-2.110 of this chapter for information on how to obtain a deviation from this part.

**Subpart B—Utility Services**

**§102-82.30 What authority must my agency have in order to procure utility service(s)?**

If you do not have a delegation of authority issued by GSA to procure utility services, or independent authority for such procurements, you cannot procure utility services. The Secretary of Defense is independently authorized to take such actions without a delegation from GSA, when the Secretary determines such actions to be in the best interests of national security. For more information on a utility services delegation of authority refer to parts 102-72.100 and 102-72.105 of this chapter.

**§102-82.35 Can Executive agencies enter into contracts for utility services?**

Executive agencies, operating under a utility services delegation from GSA, or the Secretary of Defense, when the Secretary determines it to be in the best interests of national security, may enter into



contracts for utility services (such as commodities and utility rebate programs), pursuant to the terms and conditions contained in the delegation and in accordance with FAR Part 41, Acquisition of Utility Services. FAR Part 41 requires that agencies provide or procure from sources of supply that are the most advantageous to the Federal Government in terms of economy, efficiency, reliability, or quality of service; while 40 U.S.C. 501(c) requires that agencies provide or procure such services with due regard to the mission responsibilities of the agencies concerned. For information on utility services delegation of authority refer to part 102-72 of this chapter, Delegation of Authority. For additional information on contracts for utility services search on the topics Utility or Energy on the Acquisition Gateway, <http://www.gsa.gov>.

**§102-82.40 What are Executive agencies' rate intervention responsibilities?**

Unless otherwise authorized by law, absent a delegation from GSA, Executive agencies must not engage in the types of representation referenced at 40 U.S.C. 501(c), Services for Executive agencies. The Secretary of Defense is independently authorized to take such actions without a

delegation from GSA, when the Secretary determines such actions to be in the best interests of national security. Refer to part 102-71, General, for definitions of Executive agencies and state. For information on delegation of authority refer to part 102-72, Delegation of Authority.

**Billing Code 6820-14**

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